

unaware of Greg Brown's role in serving meals to the homeless, he did recognize Dr. DeLevoe as a struggling provider of services to the homeless in Broward County who was providing a useful service. (Id., p. 35.) Dr. Cherry conceded, after viewing the tape of the program, that no one said on the program that the homeless did not need social services or medications. (Id., p. 26.)

402. The panelists did say that area churches could do no more than they were doing to meet the needs of the homeless. In fact, Dr. Cherry himself said that on the program. After viewing the tape, he admitted that it was he who said on the program that one of the ways in which the homeless could be helped was for churches to become more involved in drug rehabilitation. (Id., p. 22.) He also said that churches should consider providing a safety net for the homeless (Id.), and he specifically suggested that churches consider providing the homeless with bathing facilities and cheap lodging (Id., pp. 22, 32, 33).

403. Dr. Cherry's written testimony and Glendale's proposed findings assert that he was "set up" on the program as an expert who had the wrong answers. (Glendale PFCL I ¶554; SALAD Ex. 13, p. 2.) In fact, as he conceded after viewing a tape of the program, he spoke at great length about the needs of the homeless for drug rehabilitation, mental health outreach services, case management, bathing facilities, lodgings, meals

and jobs. (SALAD Ex. 2, pp. 32-33.) He expressly agreed with Dr. DeLevoe about the need for drug rehabilitation services. (Id., p. 32.) He himself urged churches to become more involved. (Id.) He corrected another panelist who had suggested that the majority of the homeless were men, pointing out that most were women and children. (Id., p. 34.) He also pointed out that it was a misconception that most of the homeless were criminals. (Id., p. 36.) In short, Dr. Cherry's testimony on deposition, after his recollection had been refreshed by viewing a tape of the program, established that the program on which he appeared was a thoughtful and frank discussion of the needs of the homeless in which he was an active and voluble participant. The program was exactly as described by WHFT in its issues/programs list and not at all like his characterization of it in the written statement he signed before reviewing a tape of what actually occurred. Glendale misrepresents the record in citing only his discredited written statement and not his deposition testimony.

4. Glendale's Conclusions

404. The record evidence shows that the methods TBF used to learn of the community's problems and needs were systematic and consistently applied throughout the license term. They were no less thorough, systematic, and consistent as the ascertainment efforts praised by the Commission in Fox Television Stations, Inc., supra, and no less "diligent, positive and

continuing [an] effort" than was the licensee's in Metroplex Communications, Inc. (WHYI-FM), 5 FCC Rcd 5610, 5611 (1990). The errors that Glendale alleges in the ranking of problems occurred over a five year term, and even by Glendale's calculation they affected only 25 percent of the calendar quarters. (§366 above.) Moreover, the cited errors were in almost every instance de minimis (crime is the third most important issue rather than the second), or fell within the licensee's discretion concerning the issues chosen for treatment. Seattle Public Schools, supra, 4 FCC Rcd at 629.

405. There is no Commission authority to support Glendale's contention that the issues chosen for treatment by TBF are "too broad and vague" to be effective guides to what is important in a community. Implicit in that contention is the suggestion that the Commission should sit in hypertechnical judgment of a licensee's discretion to define the problems and issues it has ascertained. Moreover, the lists of problems ascertained by TBF were at least as narrow as that used by the licensee in Fox Television Stations, Inc., supra, which the Review Board found amply met Commission requirements. 8 FCC Rcd at 2372-77.

406. Glendale likewise faults WHFT's children's programming because it was not broadcast in response to an ascertained community need. (Glendale PFCL I §678.) In fact, as shown in §377 above, WHFT's children's programming addressed several

problems and issues identified in the ascertainment. Moreover, and more important, the requirement that a licensee broadcast educational and informational programming to respond to the needs of children is presumptive. See ¶375 above. The record demonstrates that TBF has taken this responsibility seriously and has broadcast a large amount of high quality age-specific children's programming. This record richly deserves positive credit.

407. There is no merit to Glendale's contention that some of WHFT's children's programming should not be credited because it includes segments designed to entertain children -- as if "responsive" children's programming must presumptively have no entertainment value. In adopting a definition of "children's programming" to satisfy the Children's Television Act of 1990, the Commission considered and specifically rejected suggestions that definitions of children's programming which would satisfy the Act be narrowly defined as "nonfiction" or instructional only, and adopted a broader definition as more consistent with Congressional intent and licensee discretion. Report and Order In MM Docket Nos. 90-570 and 83-670 (Children's Television Programming), 6 FCC Rcd 2111, 2114 (1991). The record shows that every children's program broadcast on WHFT over the license term had segments that served the "educational and informational needs of children, the standard mandated by Congress. (TBF PFCL ¶¶482-97.)

408. Glendale's conclusions also include a broadside attack on TBF's issue-responsive programming during the License Term. Specifically, Glendale contends that the programming: failed to cover many issues of importance during the License Term; covered many issues only minimally; rarely met its goal of four programs per issue per quarter; and in many cases did not respond to community needs. (Glendale PFCL I ¶¶679-85.) As noted above, however, in each instance Glendale's conclusions rest on faulty premises -- either a distortion of the record or an erroneous reading of Commission precedent.

409. As a factual matter, the record does not support Glendale's allegation that WHFT failed to cover many issues or offered minimal coverage of other issues during the license term. See ¶¶368-87 above. Moreover, in any event, the Commission does not focus on whether a licensee broadcast programming responsive to every issue, or to the fourth most important issue as opposed to the fifth. The Commission looks at the licensee's "showing of responsiveness to community issues." Fox Television Stations, Inc., supra, 8 FCC Rcd at 2384. TBF has clearly broadcast issue-responsive programming. Which issues are treated, and how they are treated in the programming, are matters the Commission properly leaves to the licensee's discretion:

"How a broadcast licensee responds to what may be conflicting and competing needs of regional or minority groups remains largely within its discretion. It may not flatly ignore a strongly expressed need; on the other hand, there is no requirement that a station

devote 20 percent of its broadcast time to meet the need expressed by 20 percent of its viewing public." Stone v. FCC, 466 F.2d 316, 328 (D.C. Cir. 1972), quoted in Fox Television, Inc., supra, 72 RR 2d at 308.

In the final analysis, Glendale shows neither that WHFT failed to broadcast issue-responsive programming, or that it ignored a significant issue in the community during the License Term.

410. Glendale's claim that TBF programming was not responsive to community needs is, as noted in ¶¶368-87 above, factually unsupported and legally indefensible. Equally untenable is the claim that TBN network programs were not responsive to community needs. (Glendale PFCL I ¶684.) In each and every instance, a review of the questioned program shows that it was not an unreasonable exercise of licensee discretion for TBF to consider a particular program responsive to a particular need. TBF has the discretion, for example, to consider a program on home schooling, which is a growing movement in education generally and the service area in particular, as responsive to the issue of "education/schools."

411. With respect to the responsiveness of network programming to local needs, "[i]t is well established that broadcasters....are expected to serve local community needs, but it may choose from non-local as well as local program sources to meet those needs." Renewal of Broadcast Licenses, 44 FCC 2d 405, 422 (1973), quoted in Seattle Public Schools, supra, 4 FCC Rcd at 634. There is no case or Commission policy statement

that supports Glendale's supposition that a network program must mention "an example or information" about the service area to be responsive to the local need. Such a narrow definition would mean that much of the best national programming -- a program on the drug problem, for example -- could not be considered "responsive" to a local need unless, as Glendale would have it, the program specifically mentioned (in this case) Miami. Such a requirement is contrary to policy, because "[t]he Commission has repeatedly recognized that national and institutional programming may acceptably meet local needs." Id. Thus, it is a reasonable exercise of a licensee's editorial discretion to consider that a discussion with a jail chaplain about his experiences with women inmates and their drug problems in the Orange County Jail is responsive to issues in Miami, or that the discussion of a ride-sharing program in Orange County is responsive to traffic problems in South Florida, or that a former drug addict describing how he defeated his addiction is responsive to the problem of drugs and alcohol abuse in South Florida.

412. Glendale's contention that WHFT did not broadcast a sufficient amount of local programming, and that its local programming was not responsive to local needs, is simply not supported by the record. Throughout the License Term WHFT broadcast Feedback or a like program at least once a week, and Miami Praise the Lord was also broadcast at least weekly. Both programs were designed to be, and were, issue-responsive. In

fact, even excluding other local programming broadcast on the station (TBF PFCL ¶508), WHFT broadcast at least as much issue-responsive local programming as did the licensee in Fox at the end of its license term, a licensee whose record the Review Board characterized as "superlative." Fox Television Stations, Inc., supra, 8 FCC Rcd at 2384.

413. In its conclusions Glendale returns to its cant that much of TBF programming responsive to the problem of "alcohol and drugs" should not be credited as "responsive" because it consisted of "personal religious experiences" of certain people, usually who had a conversion experience, became drug or alcohol free, and started a program to help others. In ¶¶386-87 above, we have explained why this programming is responsive to the issue of drug and alcohol addiction, and why the licensee can reasonably regard it as responsive, particularly because of the helpful information disseminated on those programs. Two additional points should be addressed here.

414. First, under Glendale's formulation no (or at best very few) religious programs could ever be held to serve the public interest. However, Glendale's argument has been considered by the Commission and rejected in Pillar of Fire, 99 FCC 2d 1256, 1269-70 (Rev. Bd. 1984), rev. den., 2 FCC Rcd 519 (1987), which held that issue-responsive religious programming should be credited toward a licensee's renewal expectancy. See also, En Banc Programming Inquiry, 44 FCC 2303, 2314 (1960); Interconti-

mental Radio, Inc., 98 FCC 2d 608, 637-38 (Rev. Bd. 1984),
aff'd, 100 FCC 2d 817 (1985).

415. Second, there is no merit to Glendale's argument that these "personal religious experiences are the type of subjective matters that are no more relevant to renewal expectancy than someone's reaction to classical music." (Glendale PFCL I ¶686.) By that definition, no program could ever be considered "responsive" to a need, because every program engenders a "subjective" reaction to the program on the part of the viewer. It is the public interest purpose or result of the program that is the gauge of a licensee's service in the public interest. Using Glendale's analogy, the listener's private enjoyment of classical music is not a public interest matter. On the other hand, because reduction of drug or alcohol addiction among the population is a public interest matter, a broadcast program that encourages or promotes that result is responsive to a community need.

416. The Commission would dismiss out of hand an argument that a strictly educational program about drug and alcohol abuse, which included descriptions of successful treatment programs and informed the public where to go for treatment, was not responsive to the problem of "drug and alcohol abuse." Why denigrate the responsiveness of a program imparting exactly the same information simply because it happens to be a religious

program? The religious character of the program does not diminish the public interest benefit that the program confers.

417. Equally without merit is Glendale's contention that WHFT should receive no credit for its Prayer Line because that would be contrary to Commission policy and violate the First Amendment. (Glendale PFCL I ¶693.) TBF does not seek credit for those aspects of the Prayer Line service that involved prayer. What TBF seeks, and what the Commission should properly credit under the community outreach criterion, is the public service represented by the 24 hour availability of a phone line that provides "a good point of contact for free short-term assistance in a time of crisis" (TBF PFCL ¶578); emergency counseling to those seeking to commit suicide (Id. ¶572) or those suffering from spousal abuse who need quick help because their abuse spouse is coming home (Id.); served hundreds of people with referrals to drug and alcohol treatment programs (Id. ¶452); and helped women experiencing bad pregnancies and abusive spouses (Id. ¶572). Clearly, as attested to by numerous public witnesses, the Prayer Line was (and is) a valuable public service offered by no other television station in the Miami television market.

418. In sum, Glendale's findings cannot degrade or diminish the record of public service compiled by WHFT during the License Term. TBF carefully and systematically sought to determine the issues that were important to the community.

Through most of the License Term there was a direct link between the ascertainment process and the production of issue-responsive programming, as well as a link between the local needs ascertained in the service area and network produced issue-responsive programming. WHFT's record of broadcasting large amounts of high quality age-specific children's programming to meet the educational and informational needs of children was exemplary. Finally, the thousands of people whom WHFT fed and clothed, and the hundreds whom it helped through the Prayer Line, are an unprecedented example of community outreach. Glendale's quibbling and distortions cannot detract from the consistent excellence of this record. TBF richly deserves a renewal expectancy.

VI. CONCLUSION

419. For the reasons stated here and in our Proposed Findings of Fact and Conclusions of Law, TBF is basically qualified to remain the licensee of WHFT. It also is fully entitled to a renewal expectancy. However, Glendale is not basically qualified. Even if Glendale were qualified, based on TBF's renewal expectancy, TBF is dispositively superior to Glendale on comparative grounds. Accordingly, TBF's application

for renewal of license of WHFT should be granted, and Glendale's application for a construction permit should be denied.

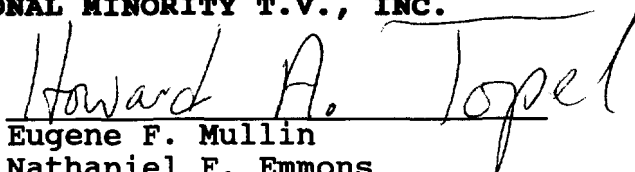
Respectfully submitted,

TRINITY BROADCASTING OF FLORIDA, INC.

TRINITY BROADCASTING NETWORK,

NATIONAL MINORITY T.V., INC.

By:



Eugene F. Mullin

Nathaniel F. Emmons

Howard A. Topel

Christopher A. Holt

Mullin, Rhyne, Emmons and Topel, P.C.

1225 Connecticut Avenue, N.W. --

Suite 300

Washington, D.C. 20036-2604

(202) 659-4700

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CERTIFICATE OF SERVICE

I, Joan M. Trepal, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, hereby certify that on this 7th day of October, 1994, copies of the foregoing "Reply Findings of Fact and Conclusions of Law" were sent by first class mail, postage prepaid, to the following:

- * The Honorable Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.--Room 226
Washington, D.C. 20554

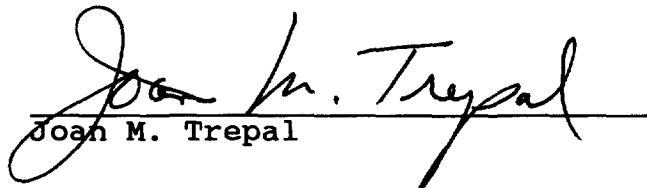
- * James Shook, Esq.
Gary Schonman, Esq.
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.--Room 7212
Washington, D.C. 20554
Counsel for the FCC's Mass Media Bureau

Lewis I. Cohen, Esq.
John J. Schauble, Esq.
Cohen & Berfield
1129 20th Street, N.W.
Washington, D.C. 20036
Counsel for Glendale Broadcasting Company

Gene A. Bechtel, Esq.
Bechtel & Cole, Chartered
1901 L Street, N.W., Suite 250
Washington, D.C. 20036
Special Counsel for Glendale Broadcasting
Company

* Hand Delivered.

David E. Honig, Esq.
3636 16th Street, N.W.
Suite B-863
Washington, D.C. 20010
Counsel for Spanish American League
Against Discrimination


Joan M. Trepal